

Message Text

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INFO SECDEF/ISA WASHDC
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CSAF/PRP/LGYP/XOXXW/KRCOS WASHDC

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E.O. 11652: GDS

TAGS: MARR, CA

SUBJECT: DISPOSAL OF TELEPHONE CABLE PLANT AT GOOSE BAY

1. THE DEFENSE LOGISTICS AGENCY (DLA) OF DOD HAS REPORTED A DISPUTE WITH CROWN ASSETS DISPOSAL CORPORATION (CADC) OVER OWNERSHIP OF THE TELEPHONE CABLE PLANT AT GOOSE BAY.

2. DURING LAST YEAR'S DRAWDOWN AT GOOSE BAY, USAF DECLARED THE PLANT EXCESS AND TURNED IT OVER TO THE U.S. DEFENSE PROPERTY DISPOSAL OFFICE (DPDO) AT GOOSE BAY FOR DISPOSAL UNDER THE 1961 AGREEMENT ON DISPOSAL OF UNITED STATES EXCESS PROPERTY IN CANADA (T.I.A.S. 4841). THE PLANT CONSISTS OF MAIN FRAME PRESSURIZED AND UNPRESSURIZED

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CABLE, AND PRESSURIZATION EQUIPMENT. THE GOOSE BAY DPDO REPORTED THE PLANT TO CADC FOR DISPOSAL IN ACCORDANCE WITH PARA 3 OF THE 1961 AGREEMENT. WHILE APPARENTLY CONCEDING USG OWNERSHIP OF THE PRESSURIZATION EQUIPMENT, CADC AND NOT HAVE TAKEN THE POSITION THAT THE REST OF THE PLANT (PRINCIPALLY THE CABLE LINES, SOME OF WHICH ARE OVERHEAD AND SOME OF WHICH ARE BURIED) IS PART OF THE REALTY WHICH

BELONGS TO CANADA. ON THAT BASIS, CADC HAS DECLINED TO PROCEED WITH DISPOSAL OF THE CABLE PLANT AS U.S. EXCESS PROPERTY.

3. THE CABLE PLANT IS PRESENTLY BEING OPERATED BY NEWFOUNDLAND TELEPHONE COMPANY ON BEHALF OF ALL USERS AT GOOSE BAY, INCLUDING CANADIAN GOVERNMENT AGENCIES AND THE USAF MAC DETACHMENT. THE PLANT WILL ULTIMATELY BE SOLD TO NEWFOUNDLAND TELEPHONE COMPANY, REGARDLESS OF THE OUTCOME OF THE OWNERSHIP DISPUTE. THE ISSUE IS WHETHER THE GOC WILL POCKET THE ENTIRE PROCEEDS OF SALE OR COMPENSATE THE USG FROM THE PROCEEDS OF SALE IN ACCORDANCE WITH PARA 3(I) AND (J) OF THE 1961 AGREEMENT. USAF ESTIMATES THE DEPRECIATED VALUE OF THE CABLE TO BE APPROXIMATELY DOLLARS 439,500.

4. CANADIAN AUTHORITIES HAVE NOT PROVIDED A FULL STATEMENT OF THE LEGAL BASIS FOR THEIR CLAIM OF OWNERSHIP. COUNSEL FOR MOT HAS BEEN QUOTED AS STATING THAT "UNDER CANADIAN CIVIL LAW THE CABLE INSTALLATION WOULD BE CONSIDERED A FIXED INSTALLATION." THIS POSITION SEEMS TO REST ON AN UNEXPLAINED INTERPRETATION OF CANADIAN LAW WHICH DOES NOT TAKE INTO ACCOUNT THE EFFECT OF THE PERTINENT PROVISIONS OF THE 1952, 1973 AND 1976 AGREEMENTS BETWEEN THE UNITED STATES AND CANADA GOVERNING USAF OPERATIONS AT GOOSE BAY. (SEE PARA 7 OF 1952 LEASED AREAS IN GOOSE BAY AGREEMENT, T.I.A.S. 2730; PARA 1 OF ANNEX TO 1973 AGREEMENT ON USE OF FACILITIES AT GOOSE BAY, T.I.A.S. 7702; AND PARA 2 OF ANNEX TO 1976 AGREEMENT ON CONTINUED USE OF SUCH

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FACILITIES.) UNDER THESE AGREEMENTS CANADIAN OWNERSHIP IS LIMITED TO "BUILDINGS, STRUCTURES AND IMPROVEMENTS PERMANENTLY (REPEAT PERMANENTLY) AFFIXED TO THE REALTY," WHILE THE UNITED STATES RETAINS TITLE TO "ALL (REPEAT ALL) OTHER PROPERTY," INCLUDING NOT ONLY THAT PROPERTY WHICH IS CLEARLY PERSONAL PROPERTY (I.E., "EQUIPMENT, MATERIAL, SUPPLIES AND GOODS"), BUT ALSO "REMOVABLE IMPROVEMENTS." THESE PROVISIONS SUPPORT THE PROPOSITION THAT OWNERSHIP OF ANY PROPERTY INSTALLED BY THE UNITED STATES AT GOOSE BAY WHICH IS REASONABLY CAPABLE OF REMOVAL REMAINS IN THE UNITED STATES. SINCE OVERHEAD AND UNDERGROUND TELEPHONE CABLES MAY BE REMOVED WITHOUT CAUSING UNREASONABLE DAMAGE TO BUILDINGS, STRUCTURES, OR LAND, AND SINCE THEIR REMOVAL WOULD NOT RENDER BUILDINGS AND OTHER STRUCTURES UNINHABITABLE OR UNUSABLE (AS WOULD BE THE CASE, FOR EXAMPLE, IF HEATING OR PLUMBING WERE REMOVED), THE USG IS OF THE VIEW THAT OWNERSHIP OF THE CABLES REMAINS IN THE UNITED STATES. ACCORDINGLY, DISPOSAL OF THE CABLES AND - OTHER EQUIPMENT AT THE CABLE PLANT SHOULD BE EFFECTED IN

ACCORDANCE WITH THE 1961 AGREEMENT AND THE UNITED STATES
COMPENSATED AS PROVIDED THEREIN.

5. USG HAS USED TERM "REMOVABLE" IN NUMEROUS FACILITY
AGREEMENTS WITH CANADA AND OTHER COUNTRIES WITH INTENT THAT

THIS TERM HAVE PRACTICAL MEANING WITHOUT REGARD TO LOCAL
LAW CATEGORIZATIONS OF PROPERTY AS "REAL" OR "PERSONAL" OR
AS "MOVEABLE" OR "UNMOVABLE". WE HAD THOUGHT THERE WAS
COMMON UNDERSTANDING WITH GOC THAT "REMOVABILITY" WAS A
PRACTICAL RATHER THAN A LEGAL QUESTION. THIS INTENT IS
IMPLICIT IN TEXT OF GOOSE BAY AGREEMENTS IN THAT REFERENCE
TO "REMOVABLE IMPROVEMENTS" IS A CONTRADICTION IN TERMS IF
CONSIDERED AS A PROPERTY LAW QUESTION.

6. DRAWING UPON ABOVE RATIONALE, EMBASSY IS REQUESTED TO
RAISE ISSUE WITH EXTAFF IN EFFORT TO BREAK PRESENT IMPASSE.
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IN ADDITION TO LEGAL ARGUMENTS, EMBASSY SHOULD REMIND
CANADIAN REPRESENTATIVES OF THE MILLIONS OF DOLLARS OF
PERMANENT IMPROVEMENTS AT GOOSE BAY CONSTRUCTED AT USG
EXPENSE WHICH CANADA HAS ACQUIRED WITHOUT PAYMENT OF
COMPENSATION TO THE UNITED STATES. WE THINK THE VALUE OF
SUCH PROPERTY DESERVES SOME CONSIDERATION WHEN DETERMINING
WHERE TO DRAW THE LINE BETWEEN PERMANENT AND REMOVABLE
IMPROVEMENTS IN CLOSE CASES SUCH AS THE CABLE PLANT. IT
SHOULD ALSO BE BORNE IN MIND THAT WE ARE NOT SEEKING PAY-
MENT FOR THE PLANT FROM THE CANADIAN TREASURY, BUT ONLY
THE NET PROCEEDS FROM THE SALE TO NEWFOUNDLAND TELEPHONE
CO. AS PROVIDED IN THE 1961 ACCESS PROPERTY AGREEMENT. WE
ARE CONCERNED THAT CANADIAN FINANCIAL ENRICHMENT FROM THE
SALE OF USG FUNDED PROPERTY COULD BECOME A TROUBLESOME
ISSUE WITH THE GOA AND CONGRESS.

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